IN THE HIGH COURT OF UTTARNCHAL AT NAINITAL.

First appeal No. 127 of 2005

1. Tehri Hydro Development Corporation
   Ltd. (THDC) through its General Manager
   (Project), Tehri, District-Tehri Garhwal.

2. State of Uttaranchal through Collector,
   Tehri Garhwal. ..... Appellants.

Versus

1. Narayan Singh Rawat S/o Sri Kamal Singh Rawat,
   R/o Village and P.O.Malli deval
   Sub Division Udaypur, District –
   Tehri Garhwal.
2. Addl. District Judge/FTC Tehri Garhwal.

..... Respondents.

Sri V.B.S.Negi, learned counsel for the appellant.
Sri Rajendra Dobhal, Adv. and Sri Lokendra Dobhal, learned counsel for the respondent No. 1.

Date: November 13, 2006.

Coram:-**Hon'ble M.M. Ghildiyal, J.**
Hon'ble B.C. Kandpal, J.

P.C.:-

The present appeal has been preferred by the appellants under Section 54 of the Land Acquisition Act, 1894 **(hereinafter referred to as the Act),** against judgment/award dated 30.11.2004 passed by Addl. District Judge/ Fast Track Court, Tehri Garhwal, whereby the Reference Court partially set-aside the order of Special Land Acquisition Officer, Tehri and the claimant was held entitled for compensation of Rs. 4,91,319/- instead of Rs. 46,261/- for the acquired land. The claimant was further held entitled to get solution and other benefits and additional amount @ 12% per

annum under Section 23 (1-A) of the Act. The claimant was further held entitled to get interest @ 9% per annum on the additional amount w.e.f. 07.08.1993 to 17.2.1997 and on these sums solatium at the rate of 30% alongwith interest at the rate of 12% per annum on the increased amount of compensation from 18.2.1997 till the date of payment.

The facts, in brief, are that irrigated land of the claimant measuring 13 Nali 6 Muthi, land of category-I measuring 9 Nali 7 Muthi and 2 Nali 9 Muthi Land of category-II situated at Village-Malideval, District Tehri Garhwal was acquired by the opposite parties/appellants for the purposes of construction of Tehri Dam. Notification under Section 4 of the Act was published in the official gazette on 07.08.1993. The Special Land Acquisition Officer, after perusing the evidence on record and hearing the objections, vide his order dated 31.03.2000 determined the value of the land at the rate of Rs. 2434.78 per Nali for irrigated land, Rs. 1217.39 per Nali for category-I land and Rs. 811.59 per Nali for category-II land and awarded Rs. 64.261/- in total as compensation of the acquired land on the basis of the sale deeds of Village-Tiwad. Aggrieved with the order dated 31.03.2000 reference was preferred by the claimant under Section 18 of the Act. The land owner alleged that his Village- Malideval situates on Tehri – Uttarkashi National Highway and the acquired land lies on the road. The land of this village is better than the land of other villages. All the facilities were available there. The land was very fertile and every grain and fruits, vegetables are grown on the said land. The land of Village- Bayali is parallel to the land of claimant and the Special Land Acquisition Officer has given his award on 03.8.1995 for the acquired land of village Bayali relying the sale deed of the village of the claimant of the year 1990 in which the rate was

fixed for the irrigated land at Rs. 36,000/- per Nali, Rs. 18,000/- per Nali for category-I and Rs. 12,000/- per Nali for category-II land. After deducting 25% the compensation was awarded for the acquired land of Village-Bayali which was 200 metres away from the main road while the land of Village – Malideval (the village of the claimant) lies on the main road and is better than the land of Village-Bayali. As such, the value of the land of the claimant should have been assessed more than the rate fixed for the acquired land of Village-Bayali. The claimant claimed the compensation for the acquired land at the rate of Rs. 1,50,000/- per Nali for the irrigated land, Rs. 90,000/- per Nali for category-I and Rs. 25,000/- per Nali for category-II land. The Reference Court, therefore, enhanced the amount of compensation assessing the value of the land at the rate of Rs. 27,000/- per Nali for irrigated land, Rs. 13,500/- per Nali for caterogy-I and Rs.9,000/- per Nali for category-II land and awarded a total compensation of Rs. 4,91,319/- instead of Rs. 46,261/- awarded by the Special Land Acquisition Officer. Aggrieved by the impugned award, the appellants have come up in the appeal.

We have heard Sri V.B.S.Negi, learned counsel for the appellants and Sri Lokendra Dobhal, learned counsel for the respondent No. 1 and carefully examined the evidence on record.

The only argument made by the learned counsel for the appellants is that the award relating to the actual value of the land acquired passed by the Reference Court is highly excessive and the sale deed which was made basis is not proper. The claimant in support of his case examined himself as P.W.1. He also filed 8 papers per list 26-C & 34-C as documentary

evidence. The opposite parties/appellants also produced Sri Bachan Singh Negi as D.W.1 in support of their case but did not adduce any documentary evidence, through they filed documents paper Nos. 6-C to 9-C in connection with the award of claimant.

It is undisputed that the claimant's Village-Malideval is situated on Tehri-Uttarkashi National Highway and the acquired land also lies on the same highway and near to Tehri City. It was also admitted to the opposite parties that no sale deed of Village-Malideval of the period of three years prior to the date of publication of notification in the gazette was available. It is also undisputed that there was ban on execution of sale deeds from the year 1992 due to construction of Tehri Dam. It has come in the evidence of P.W. 1 that the acquired land is fertile and is of good quality and every crops are grown on the said land. The land ties on the main road of Tehri City and every facility like, Bank, Post Office, Hospital, Intermediate College etc. are available there.

The learned counsel for the respondent (claimant) vehemently contended that the Special Land Acquisition Officer made an award on 03.08.1995 of the land of Village-Bayali which is situated parallel to the village of claimant i.e. Village-Malideval. In that award the Special Land Acquisition Officer made basis the sale deed of Village-Malideval of the year 1990 in awarding the compensation. In the said sale deed the value of the land was fixed at Rs. 36,000/- per Nali for irrigated land, Rs.18,000/- per Nali for category-I land and Rs. 12,000/- per Nali for category-II land. Village- Bayali is situated 200 metres away from the main road, while Village-Malideval is situated on the main road. The Special Land Acquisition Officer committed

error in making the sale deed to Village-Tiwad as exemplar sale deed in this case. The Reference Court, while recording its finding in issue No.1, came to the conclusion that the Special Land Acquisition Officer committed manifest error in not taking into account the rate fixed for the land of Village-Bayali. It has been proved from the evidence on record that the land of Village-Malideval is worthy in every angle than the land of Village-Bayali. There was ban in execution of sale deeds from 25.1.1992 due to construction of Tehri Dam and in that circumstance the value of the land of Village-Bayali should have been taken for assessing the value of the acquired land of Village Malideval and the Reference Court has rightly assessed the value of the acquired land. We are in agreement with the findings recorded by the learned Reference Court. The impugned order needs no interference by this Court.

For the identical purposes, irrigated land measuring 11 Nali 10 Muthi, land of category-I measuring 3 Nali 13 Muthi and 1 Nali land of category-11 belonging to Mastan Singh and Manmohan Singh situated in the same village (Malideval, Tehri Garhwal) was also acquired by the respondents for construction of Tehri Dam in which the Special Land Acquisition Officer vide his order dated 31.03.2000 determined the value of the land @ Rs. 2434.78 per Nali for irrigated land, Rs. 1217.39 per Nali for category-I land and Rs. 811.59 per Nali for category-II land and awarded Rs. 64,261/- in total as compensation of the acquired land. Challenging the award of SLAO, Sri Mastan Singh and Manmohan Singh preferred Land Acquisition Reference u/s 18 of the Act before the District Judge, Tehri Garhwal in which the Addl. District Judge/FTC, Tehri Garhwal enhanced the amount of compensation assessing the value of the land @ 27,000/- per Nail for irrigated land, Rs. 13,500/- per Nali for category-I and

Rs. 9,000/- per Nali for category-II land. Aggrieved with the order of Reference Court enhancing the compensation, the present appellant preferred First Appeal no. 123 of 2005 Tehri Hydro Development Corp. and another vs. Mastan Singh and two others before this Court, which was ultimately dismissed by this Court on 6th September 2006 and this Court upheld the order of the Reference Court. In the present case irrigated as well as land of I & II category of the claimant has been acquired for the similar purposes. The respondent/claimant had to abandon his immovable property and had toe rehabilitate another place therefore, the order of the Reference Court is liable to be affirmed.

Keeping in view the circumstances above, the appeal has no merit and is dismissed accordingly.

(B.C. Kandpal, J.) **(M.M. Ghildiyal, J.)**

November 13, 2006:
NCM: